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October 25, 2010



VIA HAND DELIVERY

Cynthia Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

ENTERED
Office of Proceedings

OCT 25 2010

Part of
Public Record

Re: STB Docket MCF-21039, *National Express Corporation—Verified
Petition for Exemption—Vogel Bus Company, Inc.*

Dear Ms. Brown:

Enclosed for filing in the above-captioned docket please find the original and ten (10) copies of the Verified Petition for Exemption of National Express Corporation pursuant to 49 U.S.C. § 13541. Also enclosed please find a check covering the associated filing fee of \$3,200.00 made payable to "Chief, Section of Administration, Surface Transportation Board." An extra paper copy of this Verified Petition for Exemption is included for date-stamping and return to the undersigned.

National Express Corporation respectfully requests **Expedited Consideration** of the attached petition.

Please contact me if you have any questions.

Sincerely,

Michael H. Higgins

Enclosure

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**OCT 25 2010
RECEIVED**

STB DOCKET NO. MCF-21039

**NATIONAL EXPRESS CORPORATION
— VERIFIED PETITION FOR EXEMPTION —
VOGEL BUS COMPANY, INC.**

**ENTERED
Office of Proceedings**

OCT 25 2010

**Part of
Public Record**

**VERIFIED PETITION FOR EXEMPTION OF
NATIONAL EXPRESS CORPORATION**

EXPEDITED CONSIDERATION REQUESTED

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*Counsel for
National Express Corporation*

October 25, 2010

FILED
OCT 25 2010
**SURFACE
TRANSPORTATION BOARD**

FEE RECEIVED
OCT 25 2010
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TRANSPORTATION BOARD**

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. MCF-21039

**NATIONAL EXPRESS CORPORATION
— VERIFIED PETITION FOR EXEMPTION —
VOGEL BUS COMPANY, INC.**

**VERIFIED PETITION FOR EXEMPTION OF
NATIONAL EXPRESS CORPORATION**

Pursuant to 49 U.S.C. § 13541, National Express Corporation (“NEC”), a non-carrier, by and through its undersigned counsel, submits this Verified Petition for Exemption (“Petition”) from the requirements of 49 U.S.C. § 14303 to allow NEC to acquire Vogel Bus Company, Inc. (“Vogel”), a motor passenger carrier holding interstate operating authority. NEC respectfully requests that the Surface Transportation Board (“STB”) or (“Board”) grant expedited consideration of this Petition in order to allow the underlying transaction to be completed on or before December 31, 2010. In support of this Petition, NEC states as follows:

I. Introduction and Summary

NEC is a non-carrier holding company incorporated under the laws of the State of Delaware. NEC indirectly owns and controls an interstate motor passenger carrier: Durham School Services, L.P. (“DSSLP”). Through the transaction subject to this Petition, NEC seeks to

acquire control of Vogel, an interstate motor carrier of passengers. NEC intends to accomplish the acquisition through purchase of all of the shares of Vogel pursuant to a Share Purchase and Sale Agreement.

The relief requested in this Petition is exemption of the acquisition from the review and approval requirements of 49 U.S.C. § 14303 and 49 C.F.R. § 1182. Moreover, the STB's grant of an exemption would preempt review and approval by state and local authorities, pursuant to 49 U.S.C. § 14303(f).

NEC respectfully submits that granting an exemption is appropriate for this transaction because the affected carriers (DSSLP and Vogel) are engaged primarily in student transportation services under contracts with regional and local school authorities in the United States, which services are generally beyond the STB jurisdiction under 49 U.S.C. § 13506(a)(1). As set forth in this Petition, each carrier's regulated passenger transportation service (charter operations) accounts for merely a fraction of its operating revenues. Accordingly, the transaction will have negligible effect upon the motor passenger carrier industry. More importantly, the transaction plainly satisfies the applicable legal standard set forth at 49 U.S.C. § 13541.

II. The Parties

A. National Express Corporation.

NEC is a non-carrier holding company incorporated under the laws of the State of Delaware. NEC indirectly owns and controls two companies, DSSLP and A&E Transportation ("A&E"), which are engaged in providing student transportation services.¹ These services are

¹ See STB Docket No. MC-F-20999, National Express Corporation—Intra-Corporate Family Transaction, 73 Fed. Reg. 80511 (Served Dec. 31, 2008); STB Docket No. MC-F-21031, National Express Corporation—Intra-Corporate Family Transaction, 2003 STB LEXIS 313 (Served June 4, 2003); and STB Docket No. MC-F-20968, National

not subject to STB jurisdiction pursuant to 49 U.S.C. § 13506(a)(1) (“Neither the Secretary nor the Board has jurisdiction under this part over . . . a motor vehicle providing transportation only of school children and teachers to or from school”). In addition to its core school bus services, DSSLP provides charter passenger services to the public. NEC is an indirect subsidiary of a British corporation, National Express Group, plc. Through the transaction subject to this Petition, NEC intends to acquire all of the shares of Vogel.

1. Durham School Services, L.P.

DSSLP is a Delaware limited partnership with its principal place of business located at 4300 Weaver Parkway, Warrenville, IL 60555. DSSLP operates primarily as a provider of non-regulated school bus transportation services, transporting children to and from school. For purposes of its core business of student transportation, DSSLP maintains a fleet of approximately 13,000 school buses, and has approximately 15,500 employees. It provides school bus services in 30 states under contract with regional and local school jurisdictions. DSSLP also provides limited charter passenger carrier services to the public. For purposes of its passenger carrier services, DSSLP holds common carrier operating authority subject to the jurisdiction of the Federal Motor Carrier Safety Administration (“FMCSA”) in Docket No. MC-163066. The USDOT number assigned to DSSLP is No. 350651. DSSLP’s current safety rating is “conditional.”

2. A&E Transportation.

A&E is a New York corporation with its principal place of business at 101 West Utica Street, Oswego, NY 13126. A&E operates as a provider of non-regulated school transportation services, transporting children to and from school in school buses. For purposes of its core

Express Group PLC—Control Exemption—School Services and Leasing, 2000 STB LEXIS 493 (Served Aug. 28, 2000).

business of student transportation, A&E maintains a fleet of approximately 300 school buses, and has approximately 520 employees. A&E provides limited charter bus services; however, these services are confined to intrastate transportation.

B. Vogel Bus Company, Inc.

Vogel is a New Jersey corporation with its principal place of business located at 109 Aldene Road, Roselle, NJ 07203. Vogel operates primarily as a provider of non-regulated school bus transportation services, transporting children to and from school. Vogel maintains a fleet of approximately 195 school buses, and has approximately 240 employees. It provides school bus transportation in New Jersey. Vogel also operates as a motor passenger carrier providing charter service to the public using both its school buses and a small fleet of motor coaches. For purposes of its interstate passenger operations, Vogel holds common carrier operating authority subject to the jurisdiction of the FMCSA in Docket No. MC-274520. The USDOT number assigned to Vogel is No. 815118. Vogel's current safety rating is "satisfactory."

III. The Proposed Transaction

NEC intends to acquire control of Vogel through its acquisition of all of the shares of Vogel pursuant to a Share Purchase and Sale Agreement. Subject to the STB's grant of an exemption, as requested herein, NEC desires to complete the transaction on or before December 31, 2010. Accordingly, NEC has requested expedited consideration from the Board.

IV. Scope of the Proposed Exemption

The exemption requested in this Petition would enable the NEC to complete the acquisition without obtaining STB approval under 49 U.S.C. § 14303 and the regulations at 49 C.F.R. § 1182. The STB's grant of an exemption would also have the effect of preempting state and local regulation under 49 U.S.C. § 14303(f). This provision states:

A carrier or corporation participating in or resulting from a transaction approved by the Board under this section, or exempted by the Board from the application of this section pursuant to section 13541, may carry out the transaction, own and operate property, and exercise control or franchises acquired through the transaction without the approval of a State authority. A carrier, corporation, or person participating in the approved or exempted transaction is exempt from the antitrust laws and from all other law, including State and municipal law, as necessary to let that person carry out the transaction, hold, maintain, and operate property, and exercise control or franchises acquired through the transaction.

Thus, the STB's granting of an exemption under 49 U.S.C. § 13541 will insulate the transaction from state and location regulation that could otherwise interfere with the closing of the transaction and the subsequent operations of the involved carriers. See STB Finance Docket No. 33007, Laidlaw Transit, Inc.—Control and Merger Exemption—National School Bus Service, Inc., 1996 STB LEXIS 277 at *13 (Served Oct. 25, 1996) (“Laidlaw Transit”)

V. Jurisdictional Statement

NEC's proposed acquisition of Vogel is subject to STB jurisdiction under 49 U.S.C. § 14303, in particular, 49 U.S.C. § 14303(a) which governs “[a]cquisition of control of a carrier by a person that is not a carrier but that controls any number of carriers.” Moreover, the transaction meets the financial threshold under 49 U.S.C. § 14303(g) because the gross operating revenues of each carrier from all transportation operations (regulated and unregulated) exceeded

US\$2,000,000 for a period of 12 consecutive months ending not more than 6 months before the proposed consummation date. See 49 C.F.R. § 1182.2(a)(5).

However, the Board must exempt a transaction otherwise subject to its jurisdiction when the transaction satisfies the standard set forth at 49 U.S.C. § 13541(a). As demonstrated below, this transaction meets the applicable legal standard.

VI. The Proposed Transaction Satisfies 49 U.S.C. § 13541

Under 49 U.S.C. § 13541(a), the Board shall exempt a transaction from regulation when the agency finds that its application of a particular provision:

- (1) is not necessary to carry out the transportation policy of [49 U.S.C. § 13101];
- (2) is not needed to protect shippers from the abuse of market power or that the transaction or service is of limited scope; and
- (3) is in the public interest.

For the reasons set forth below, NEC's proposed acquisition of Vogel meets the foregoing standard, such that application of 49 U.S.C. § 14303 and 49 C.F.R. § 1182 is not necessary.

A. The transaction advances the Transportation Policy of 49 U.S.C. § 13101.

NEC submits that the transaction will advance several elements of federal motor carrier transportation policy at 49 U.S.C. § 13101. As a leading national provider of student transportation services, NEC has considerable expertise in passenger logistics, fleet operations, employee training and management, and financing. NEC's proposed acquisition of Vogel reflects NEC's desire to grow its core business of providing non-regulated school bus transportation for elementary, junior high, and high school students.

NEC will leverage its expertise and resources to enhance Vogel's limited charter services, focusing on operations in the same mid-Atlantic region. NEC's existing asset base, financial resources and its larger size will provide a strong foundation upon which to support Vogel's charter operations, resulting in the delivery of better and more efficient services to customers. NEC also believes that its expertise will enhance fleet utilization and reduce idle equipment time. With respect to Vogel's charter operations, NEC intends to maintain existing compensation and benefit levels for employees, and does not anticipate a substantial reduction in force flowing from the transaction. Downsizing, if any, would be limited to reducing redundancy at, or above the managerial level. NEC does not anticipate that the transaction would have any negative effects on the limited charter passenger operations of DSSLP.

Accordingly, the transaction directly advances several tenets of federal transportation policy: 49 U.S.C. §§ 13101(a)(1)(B) ("to promote safe, adequate, economical, and efficient transportation;"); (a)(1)(C) ("to encourage sound economic conditions in transportation, including sound economic conditions among carriers;"); (a)(1)(D) ("to encourage the establishment and maintenance of reasonable rates for transportation, without unreasonable discrimination or unfair or destructive competitive practices;"); (a)(1)(F) ("to encourage fair wages and working conditions in the transportation industry;"); (a)(2)(B) ("promote efficiency in the motor carrier transportation system and to require fair and expeditious decisions when required;"); (a)(2)(C) ("meet the needs of shippers, receivers, passengers, and consumers;"); (a)(2)(E) ("allow the most productive use of equipment and energy resources;"); and, (a)(2)(I) ("improve and maintain a sound, safe, and competitive privately owned motor carrier system;"). See STB Docket No. MC-F-20968, National Express Group PLC—Control Exemption—School Services and Leasing, 2000 STB LEXIS 493 at *5-6 (Served Aug. 28, 2000).

B. The Transaction is of limited scope.

NEC submits that the transaction is limited in scope within the meaning of 49 U.S.C. § 13541(a)(2). As an initial matter, DSSLP, the passenger carrier controlled by NEC, has only a marginal role in interstate passenger transportation. As noted above, the core operation of DSSLP is providing school bus services to regional and local school districts. Regulated passenger services are comprised of limited charter bus services, conducted primarily during summer months when demand drops for school bus services. In terms of comfort and amenities, the passenger service offered by DSSLP simply cannot compete with traditional motor coach operations. As such, NEC does not have a sizeable footprint in the regulated passenger transportation industry. Indeed, its gross revenues from such services for fiscal year 2009 amounted to US\$1.2 million, which is two tenths of a percent (0.2%) of its operating revenues.

NEC's acquisition of Vogel will not result in the creation of significant market power. As described above, Vogel's core business is also the transportation of school children to and from school in school buses. Vogel's revenue from charter passenger operations (less than US\$200,000) represents a small fraction of its overall operating revenue (approximately US\$11 million) for 2009. Vogel's passenger operations are provided using both school buses and a small fleet of motor coaches. Its operations are confined primarily to the mid-Atlantic market, serving Delaware, New York, New Jersey, and Pennsylvania. This service includes transportation for summer camp activities, weddings, proms, religious and family celebrations, anniversary and birthday celebrations, concerts, sporting events, and other entertainment excursions. NEC will not gain or be able to exert market power by virtue of the proposed acquisition. At most, NEC may achieve modest growth in a charter bus market that is dominated

by motor passenger carriers operating motor coaches. See Laidlaw Transit, 1996 STB LEXIS 277 at *11 (“[I]t appears that to the extent the proposed transactions have any competitive impact on the motor passenger industry, it will be in the form of a modest increase in competition at the low end of the regulated charter and special operations spectrum.”)

Moreover, there is little overlap among the areas served by DSSLP and Vogel. They are competitors, at most, in the mid-Atlantic, primarily New York, New Jersey, and Delaware; and the proposed consolidation would not substantially reduce competition. As discussed above, the carriers’ ability to effectively compete in the motor passenger carrier industry is inherently limited by the nature of their core operations: school buses simply do not provide the same level of comfort and amenities offered by traditional motor coach lines, such as reclining seats, luggage capacity, Internet access, DVD players and entertainment sources, and lavatories. Also, their availability for charter operations is necessarily limited by obligations for their core school bus operations. See Laidlaw Transit, 1996 STB LEXIS 277 at *11 (“School buses cannot compete with normal motor coaches in terms of passenger comfort, and daily school schedules make it impossible to use school buses on extended trips during most of the year. . . it is unlikely that the transaction will enhance petitioners’ ability to penetrate the charter and special operations market much less abuse market power.”)

In light of these facts, the transaction is clearly limited in scope within the meaning of 49 U.S.C. § 13541(a)(2). And, for the same reasons, it is also true that regulation of the transaction is not necessary to protect passengers from the abuse of market power.

C. The transaction serves the public interest.

The transaction advances the public interest within the meaning of 49 U.S.C. § 13541(a)(3). As discussed above, the transaction will advance the objectives of federal motor carrier transportation policy, and in this regard it clearly serves the public interest. Granting an exemption would also conserve the resources of the Board, and promote efficient and expeditious handling of regulatory matters. Moreover, an exemption would preclude state and local review of the transaction, and thereby foreclose duplicative, costly, and lengthy review procedures that could otherwise apply. See Laidlaw Transit, 1996 STB LEXIS 277 at *13 (“Regulation of the proposed transaction, instead of serving meaningful public policy or regulatory purposes, would be wasteful both of our resources and those of petitioners, the four [acquired] motor passenger carriers, and the public.”) Finally, NEC anticipates that its existing expertise and resources will improve Vogel’s limited charter passenger services, which inures to the benefit of the public.

VII. Additional Declarations

A. Mexican domicile or ownership.

None of the parties to the transaction are domiciled in Mexico or owned or controlled, directly or indirectly, by persons of that country.

B. Safety fitness ratings.

The safety fitness ratings of DSSLP and Vogel are set forth above. None of the carriers have “unsatisfactory” safety ratings.

C. Environmental issues.

The transaction will have no significant impacts on the quality of the human environment or on the conservation of energy resources. NEC anticipates that operations of all parties will continue at current levels.

D. Labor impacts.

The transaction will not have substantial impacts on employees or labor conditions. NEC does not anticipate a measurable reduction in force or changes in compensation levels and/or benefits. Staffing redundancies could potentially result in limited downsizing of back-office and/or managerial-level personnel.

E. Expedited consideration.

NEC respectfully requests that the Board give expedited consideration to this Petition and the relief requested herein. Prompt consideration is desired in order to allow the transaction to be consummated on or before December 31, 2010. Completion of the transaction by the close of the year is important to NEC and Vogel for tax and accounting purposes.

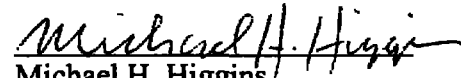
NEC anticipates that this Petition and the relief requested herein will be uncontroversial; thus, NEC respectfully proposes that the Board allow an abbreviated comment period of fifteen (15) days and a reply period of five (5) days, following sequentially after publication of notice in the Federal Register. NEC requests prompt action from the Board, following the close of the comment period.

VIII. Conclusion and Request for Relief

For the reasons stated in this Petition, the Board is respectfully requested to issue an expedited decision exempting the transaction described above from the approval requirements

and processes of 49 U.S.C. § 14303 and 49 C.F.R. § 1182, and from all other requirements of state and local law that might otherwise affect the parties' ability to carry out the transaction. A draft Federal Register notice of the proposed exemption is attached hereto.

Respectfully submitted,


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401 9th Street N.W.
Suite 1000
Washington, D.C. 20004
(202) 274-2871

*Counsel for
National Express Corporation*

October 25, 2010

VERIFICATION

I, ROBERT RAMSDELL, verify under penalty of perjury that the foregoing is true and correct based on my knowledge, information, and belief. Further, I certify that I am qualified and authorized to file this Verified Petition for Exemption on behalf of National Express Corporation. Knowing and willful misstatements or omissions of material facts constitute federal criminal violations punishable under 18 U.S.C. § 1001 by imprisonment up to 5 years and fines up to \$10,000 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. § 1621 which provides for fines up to \$2,000 or imprisonment up to 5 years for each offense.

Robert Ramsdell
Signature

SENIOR VICE PRESIDENT
Title

OCTOBER 21, 2010
Date

[Draft Federal Register Notice]

STB Finance Docket No. MC-F-21039

National Express Corporation—Verified Petition for Exemption—Vogel Bus Company, Inc.

AGENCY: Surface Transportation Board, Department of Transportation

SUMMARY: National Express Corporation (NEC), a non-carrier, seeks an exemption, under 49 U.S.C. 13541, from the prior approval requirements of 49 U.S.C. 14303 and 49 C.F.R. § 1182 to acquire control of Vogel Bus Company, Inc. (Vogel) a motor passenger carrier. NEC requests expedited review of its petition, asking that the exemption become effective no later than December 31, 2010.

DATES: Comments must be filed by [_____, 2010], no later than 15 days after publication date of this Notice. NEC may file a reply by [_____, 2010].

ADDRESSES: Send the original and 10 copies of comments referring to STB Finance Docket No. MC-F-21039 to Surface Transportation Board, Office of Proceedings, 395 E Street, SW, Washington, DC 20423. In addition, send one copy of comments to NEC's counsel: Michael H. Higgins, Troutman Sanders LLP, 401 9th Street, NW, Suite 1000, Washington, DC 20004-2134.

FOR FURTHER INFORMATION CONTACT: _____, (202) []-[]-[] [TDD for the hearing-impaired: (202) []-[]-[]

SUPPLEMENTARY INFORMATION: NEC, a non-carrier, requests an exemption under 49 U.S.C. § 13541 from Surface Transportation Board (STB) approval of the acquisition of control by NEC of Vogel, a motor passenger carrier. NEC indirectly owns and controls one interstate motor passenger carrier, Durham School Services, L.P., which primarily provides non-regulated transportation of school children to and from school. Vogel also operates primarily as a provider of student transportation. However, both DSSLP and Vogel provide limited interstate charter bus transportation to the public. NEC would acquire control of Vogel through a Share Purchase and Sale Agreement.

NEC requests exemption of the acquisition from the requirements for STB approval set forth at 49 U.S.C. § 14303 and 49 C.F.R. § 1182. In addition to exemption from STB approval, the grant of an exemption would preempt review and approval by state and local authorities. 49 U.S.C. § 14303(f).

NEC believes that an exemption is appropriate because the involved carriers are engaged primarily in school transportation service under contract with local and regional school authorities in the United States, which service is beyond the STB's regulatory jurisdiction. 49 U.S.C. § 13506(a)(1). As documented in the Petition, regulated passenger transportation amounts to a fraction of the annual gross revenues of the carriers. Thus, the proposed transaction affects regulated transportation incidentally, if at all. NEC submits that the transaction will

advance federal transportation policy at 49 U.S.C. § 13101, is limited in scope, and is in the public interest.

Pursuant to 49 U.S.C. § 13541(d), the Secretary or the STB, as applicable, may revoke an exemption, to the extent specified, on finding that application of a provision of this part to the person, class, or transportation is necessary to carry out the transportation policy of 49 U.S.C. § 13101. If the Petition contains false or misleading information, the Board shall summarily revoke the exemption and require divestiture. Petitions to revoke may be filed at any time.

Dated: [_____, 2010]

By the Board, Chairman [_____] [_____] [_____]

[Secretary]

[FR Doc. ____-____ Filed ____-____, ____-____]